

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF SOUTH DAKOTA**

**ROOM 211**

**FEDERAL BUILDING AND U.S. POST OFFICE**

**225 SOUTH PIERRE STREET**

**PIERRE, SOUTH DAKOTA 57501-2463**

**IRVIN N. HOYT**  
**BANKRUPTCY JUDGE**

**TELEPHONE (605) 224-0560**  
**FAX (605) 224-8020**

November 17, 2005

Douglas H. Thompson  
48229 Highway 46  
Hudson, South Dakota 57034

Thomas A. Blake, Esq.  
505 W. 9<sup>th</sup> Street  
Suite 202  
Sioux Falls, South Dakota 57104

Subject: ***In re Michael John Burke***  
Chapter 7; Bankr. No. 04-41488

Dear Mr. Thompson and Mr. Blake:

The matter before the Court is the Motion for Order Directing Clerk of Court to Discharge Judgment(s) Voided in Bankruptcy filed by Debtor on October 25, 2005. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and subsequent order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014. As set forth below, an order will be entered granting Debtor's motion.<sup>1</sup>

**Summary.** On October 25, 2004, Doug Thompson ("Thompson") obtained a judgment against Michael John Burke in state court for \$4,000.00 plus costs. On November 23, 2004, Michael John Burke ("Debtor") filed for relief under chapter 7 of the bankruptcy code. Debtor listed Thompson as an unsecured creditor on his schedule F.

On November 25, 2004, the Bankruptcy Clerk served notice of commencement of the case on Debtor's creditors, including Thompson. The notice of commencement of case clearly stated the deadline for filing a complaint objecting to discharge or to determine the dischargeability of a particular debt was February 28, 2005.

Neither Thompson nor any of Debtor's other creditors filed a complaint objecting to discharge or to determine the dischargeability of a particular debt. On March 1, 2005, Debtor was therefore granted a discharge under § 727 of the bankruptcy code.

On October 25, 2005, Debtor filed a Motion for Order Directing Clerk of Court to Discharge Judgment(s) Discharged in Bankruptcy. Thompson's judgment was listed in Debtor's motion. On November 7,

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<sup>1</sup> The relevant facts are not in dispute. The issue presented is purely a question of law. Thus, no hearing was held.

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2005, Thompson filed an objection to Debtor's motion, in which he described the circumstances giving rise to his claim against Debtor.

**Discussion.** Section 524(a)(1) of the Bankruptcy Code provides:

(a) A discharge in a case under this title -

- (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived[.]

Section 524(a)(1) does not require the debtor to do anything to void a judgment. The discharge automatically voids any judgment that represents a determination of the debtor's personal liability for a debt that has been discharged.

Section 15-16-20 of the South Dakota code establishes the procedure for removing such a judgment from the records of the clerk of court for the county in which it was docketed. When a debtor receives a bankruptcy discharge, she may file a motion in the bankruptcy court for an order listing each state court judgment that has been voided. Upon receipt of the bankruptcy court's order, the clerk of court for the county in which the judgment was docketed must enter it in the judgment docket. This has the effect of discharging the listed judgments from and after that date.

In this case, Thompson received timely notice of Debtor's bankruptcy. He did not object to Debtor's discharge or to the dischargeability of his claim. His claim was therefore discharged on March 1, 2005. His judgment was voided on that same date. Debtor is therefore entitled to the relief requested in his motion.

The Court will enter an appropriate order.

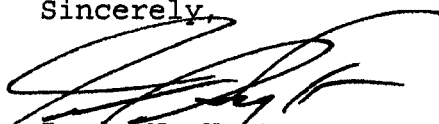
I hereby certify that a copy of this document was electronically transmitted, mailed, hand delivered or faxed this date to the parties on the attached service list.

NOV 17 2005

Charles L. Nail, Jr., Clerk  
U.S. Bankruptcy Court, District of South Dakota  
By MIN

INH:sh

Sincerely,

  
Irvin N. Hoyt  
Bankruptcy Judge

cc: case file (docket original; copies to parties in interest)

Michael John Burke  
211 W. 4th  
Worthing, SD 57077

Douglas H. Thompson  
48229 Hwy 46  
Hudson, SD 57034